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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Revision of the Commission's Rules)
to Ensure Compatibility with Enhanced)
911 Emergency Calling Systems)
)
Kodiak Wireless, LLC's)
Request for Waiver of Section 20.18(e) and (g))
of the Commission's Rules)

CC Docket No. 94-102

To: Wireless Telecommunications Bureau

KODIAK WIRELESS, LLC
PETITION FOR WAIVER OF SECTIONS 20.18(e) AND (g) OF THE RULES

Kodiak Wireless LLC ("Kodiak"), licensee in the A2 portion of the Alaska 2 - Bethel RSA, by its attorneys, and pursuant to Sections 1.3 and 1.925 of the Commission's Rules, hereby requests a limited and temporary waiver of Sections 20.18(e), (g)(1) and 20.18(g)(2) of the Commission's Rules regarding Phase II enhanced 911 ("E911") service.¹ Kodiak is fully committed to providing E911 location capability to meet the emergency needs of its customers as soon as possible. To date, however, the deployment of Phase II capability has been impossible as the requisite ALI-capable handsets are simply not yet available. Further, based on the type and size of its customer base, application of the E911 Rules would be financially unduly

¹ 47 C.F.R. §§ 1.3, 1.925.

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burdensome. Hence, we respectfully submit that this request for a temporary and limited waiver be granted.²

BACKGROUND

Kodiak is an extremely small carrier that commenced initial operations with a single cell site providing coverage to portions of Kodiak Island, Alaska on October 18, 2000. Its customer base is comprised of approximately 1600 subscribers from a local military base, a missile installation, fishing villages and tourists who visit Kodiak Island. The topography of the service area is extremely mountainous with deep valleys as well as portions of the Pacific Ocean, making analog technology the most technically feasible option through which Kodiak provides service. This topography also precludes the possibility of using triangulation to determine E911 location information. Because of this, the use of ALI-capable handsets is the best method for providing E911 location information to PSAPs. On November 9, 2000, Kodiak filed its Report on Enhanced 911 Phase II implementation. In its Report, Kodiak stated that it would, “use every effort to meet the October 1, 2001 deadline, assuming the handsets are available ... in the event the handsets are not available in time for the October 1, 2001 deadline, Kodiak will reassess its options.”³ As further discussed below, the ALI-capable handsets are still unavailable for analog based systems such as Kodiak’s. Moreover, Kodiak has just commenced operations less than a year ago, changing its switch at this time would be cost prohibitive. Accordingly, Kodiak respectfully requests a temporary and limited waiver of the Commission’s Rules regarding Phase II E911 service.

² 47 C.F.R. §1.925

³ See *Kodiak Wireless, LLC Report on Enhanced 911 Phase II Implementation*, CC Docket No. 94-102 (November 9, 2000) at 3.

I. COMPLIANCE WITH THE OCTOBER 1, 2001 DEADLINE IS TECHNOLOGICALLY INFEASIBLE

Under Section 1.3 of its rules, the Commission may waive any provision of its rules if good cause is shown.⁴ The Commission must take a “hard look”⁵ and then decide if such a waiver is in the public interest.⁶ Section 1.925(b)(3) of the Commission’s Rules sets out the general standards for determining when a waiver should be granted in Wireless Telecommunications Bureau proceedings:

The Commission may grant a request for waiver if it is shown that:

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by the application to the instant case, and that a grant of the requested waiver would be in the public interest: or,
- (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.⁷

The Commission has already recognized that wireless carriers may face difficulties in meeting the October 1, 2001 deadline to comply with Sections 20.18(e) and (g) of its rules. In the Commission’s *Fourth Memorandum and Order* (“*Fourth MO&O*”), the Commission recognized that there would be instances when “technology-related issues” or “exceptional circumstances” would cause delay in a wireless carrier’s ability to meet the October 1, 2001 deadline to become Phase II compliant.⁸ Manufacturers have yet to overcome the technological

⁴ 47 C.F.R. § 1.3

⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969)

⁶ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)

⁷ 47 C.F.R. § 1.925(b)(3)

⁸ *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Fourth Memorandum Opinion and Order*, 15 F.C.C.R. 17442 at ¶43 (2000) (“*Fourth MO&O*”).

complexities in order to make ALI-capable handsets available in time for carriers such as Kodiak to meet the Commission's deadlines. The requested waiver is consistent with the Commission's recognition that compliance deadlines should be linked to the availability of manufacturer equipment.⁹

As shown herein, and in its original report, Kodiak's circumstances are certainly exceptional, and it faces technological issues that simply cannot be overcome in time to meet the October 1, 2001 deadline. Specifically, the unique topographic and demographic characteristics of the area in which Kodiak Island is situated precludes the use of any technology to provide E911 location information other than ALI-capable handsets. Yet these handsets are simply not available. In establishing the October 1, 2001 deadline, the Commission relied on the availability of the necessary equipment for Phase II E911. Indeed, the Commission has been flooded with Phase II waiver requests, many citing the late arrival to market of ALI-capable handsets as a major impediment to the implementation of this important service.¹⁰

Manufacturers have varied in their prediction of when ALI-capable handsets will be available. While many vendors are making no predictions at all, and the earliest prediction is for arrival on the market during the 2nd quarter of 2002, but only in high-end, and thus high-priced, handsets.¹¹ More moderately priced handsets, which are more feasible for the unique subscriber

⁹ See, e.g., *Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1993; Compatibility Between Cable Systems and Consumer Electronic Equipment*, 9 F.C.C.R. 1981 ¶¶ 76-77 (1994) (modifying a proposed compliance deadline to account for the unavailability of necessary equipment).

¹⁰ See e.g. *Petition of RSA1 Limited Partnership d/b/a/ Cellular 29 Plus for Limited Waiver of Section 20.18(g) of the Commission's Rules*, CC Docket No. 94-102 (September 21, 2001); *Arctic Slope Telecommunications and Cellular, Inc. Petition for Limited Waiver of Sections 20.18(e) and (g) of the Commission's Rules*, CC Docket No. 94-102 (September 20, 2001).

¹¹ See *NTELOS, Inc. Waiver Request* CC Docket No. 94-102, (September 21, 2001).

base of Kodiak, will not arrive until even later.¹² Even when ALI-capable handsets begin to become available, market forces dictate that they will first be made available to the largest carriers with most leverage over vendors;¹³ this is the natural working of the market. This means, however, that even when ALI-capable handsets begin to arrive, there will be some delay before small carriers, especially analog-based carriers such as Kodiak, will be able to acquire them.¹⁴ In addition, as discussed in Section II *infra*, MSC upgrades for Kodiak's Nortel switch will not be available for some time.

Moreover, Kodiak has received no requests for E911 location information from the PSAP, nor will the PSAP be capable of utilizing such information in the near future. Given Kodiak's unique and exceptional circumstances a temporary and limited waiver of the Commission's Phase II E911 requirements is warranted until the technology is readily available and Kodiak is in a position to meet the costs associated with the required switch upgrades as further discussed below. Such a waiver is consistent with the underlying purpose of the establishment of the October 1, 2001 deadline.

II. COMPLIANCE WITH PHASE II E911 REQUIREMENTS IS COST PROHIBITIVE FOR A NEW CARRIER SUCH AS KODIAK.

Kodiak is an extremely small carrier who launched service less than a year ago with a single analog cell site providing service to military personnel, local fishing communities and tourists. Even if anyone in Kodiak's service area had an ALI-capable handset, (which they do not) the Nortel switch at its site is not currently capable of handling E911 location information.

¹² *Id.*

¹³ See e.g., *Inland Cellular Telephone Co. Petition for Limited Waiver of Sections 20.18(e) and (g) of the Rules*, CC Docket No. 94-102 (July 30, 2001).

¹⁴ See *Inland Petition* at 6; *NTELOS Waiver* at 3.

Kodiak fully intends to upgrade its switch, and anticipates it will be financially feasible to do so around the same time that more affordable ALI-capable handsets are on the market, and well before the PSAP is capable of making a request for E911 information.¹⁵

Kodiak Island is a far cry from a major metropolitan area; its population density is less than two people per square mile. The PSAP is not yet capable of utilizing E911 information and, moreover, Kodiak receives, on average, only one emergency 911 call per day. Requiring Kodiak to immediately upgrade its switch would, in the face of such facts, serve no other purpose than to financially devastate this emerging carrier. Compliance under such circumstances is certainly unduly burdensome. Moreover, there is only one other carrier of any sort in the area. The financial burden that compliance would force upon Kodiak may very well result in the discontinuation of its service, leaving the residents of and visitors to Kodiak Island with no choice of carrier and no beneficial competition. The public interest would be served by granting Kodiak a limited and temporary waiver of the Commission's Phase II E911 requirements until such time as Kodiak's business plans call for the upgrade of its switch. Kodiak anticipates such an upgrade within the next two years.

III. COMPLIANCE SCHEDULE

Kodiak requests a waiver of the October 1, 2001 deadline to "begin selling and activating" handsets, along with the deadlines relating to "selling and activating" benchmark dates. Due to the delay in the availability of ALI-capable handsets, and given the financial burden of upgrading its equipment, Kodiak does not anticipate being technically capable of

¹⁵ Other carriers have indicated that Nortel MSC upgrades will not become available until well into 2002.

selling and activating ALI-capable handsets until 2nd Quarter 2003.¹⁶ We also ask that the 25% benchmark be extended to the 4th Quarter 2003, that the 50% benchmark be extended to 2nd Quarter 2004, and that the 100% benchmark be extended to the 4th Quarter 2004. Finally, we request that the 95% ALI-handset penetration rate be shifted to the 2nd Quarter 2006.


¹⁶ This compliance schedule is based on current predictions by vendors already submitted by other carriers in this proceeding regarding the availability of ALI-capable handsets. If, however, the vendor does not have a handset model that would meet the Commission's requirements within this timeframe, Kodiak will have to seek a further waiver.

CONCLUSION

Kodiak recognizes the importance of E911 service and fully supports its implementation. There are three elements that must congrue in order for E911 service to fulfill the purposes for which it was intended. A suitable technology must exist to provide location information, the PSAP must be capable of utilizing this information, and the carrier must be financially capable of implementing it. None of these elements are currently available to Kodiak. Each of these elements is, however, progressing and it appears that if a waiver is granted, each will effectuate at nearly the same time, resulting in the provision of Phase II E911 service. Kodiak respectfully requests that this request for a limited and temporary waiver be granted.

Respectfully submitted,

KODIAK WIRELESS, LLC

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Its attorney.

September 28, 2001

DECLARATION OF BOB BENEDA

I, Bob Beneda, do hereby declare under penalty of perjury the following:

1. I am an engineer for Kodiak Wireless, LLC
2. I have read the foregoing "Petition for Waiver of Sections 20.18(e) and (g) of the Rules." I have personal knowledge of the facts set forth therein, and believe them to be true and correct.



Bob Beneda

9-28-01

Date